In this Chapter...

This chapter addresses domestic violence as a factor in establishing and enforcing support. Along with information about Michigan law governing property division, spousal support, and child support, the reader will find suggestions for promoting safety in support enforcement proceedings. The discussion also addresses concerns about the federal Personal Responsibility and Work Opportunity Act in cases involving domestic violence.

5.1 The Significance of Support in Cases Involving Domestic Violence

The significance of child or spousal support to an abused individual can be best understood by keeping in mind that domestic violence perpetrators use a variety of abusive tactics in order to exercise control over their intimate partners. Such tactics often include control over financial matters, such as:*

*See Section 1.6 on abusive tactics.

- Preventing the abused party from working or developing job skills.
- Controlling the abused party's paycheck.
- Limiting the abused party's access to money.
- Interfering with the abused party at the workplace.
- Damaging the abused party's credit rating.
- Failing to meet court-ordered support obligations.

For many abused individuals, the abuser's economic control is a key obstacle to leaving the relationship.* It is difficult to establish economic independence from an abuser, especially for individuals who have been isolated from supportive friends or relatives or prevented from acquiring work skills. It is thus critical that courts establish and facilitate enforcement of adequate spousal and child support awards to assist abused individuals in attaining economic self-sufficiency. Without such support, abused persons may be unable to provide homes for themselves or their children.

*Menard & Turetsky, *Child Support Enforcement & Domestic Violence*, 50 Juvenile & Family Court J 27, 30 (Spring, 1999).

In one study, conducted in ten cities across the United States, the U.S. Department of Justice reported that 22% of homeless parents (mainly mothers) left their homes because of intimate partner violence. See Rennison and Welchans, *Intimate Partner Violence*, p 8 (Bureau of Justice Statistics Special Report, May, 2000), citing *Homes for the Homeless. Ten Cities 1997–1998: A Snapshot of Family Homelessness Across America* (Institute for Children and Poverty). As a result of this homelessness (and being physically and economically abused), abused persons may also lose custody of their children, or return to their abusive partners.

Abused individuals need child and spousal support because domestic violence frequently inflicts extra financial burdens on the family. These may include:*

*Erickson, *Child Support Manual for Attorneys & Advocates*, p 72 (Nat'l Center on Women & Family Law, Inc,1992).

- **F** Extra shelter costs.
- **F** Broken or stolen belongings.
- **F** Extra medical expenses.
- **F** Counseling expenses.
- **F** Litigation expenses.

*Pearson, et al, *Child Support & Domestic Violence: The Victims Speak Out*, in Violence Against Women 427–429, 441, 444 (Sage Periodicals Press, April, 1999).

Some commentators point out that abused individuals may be hesitant to seek the spousal or child support they need for fear that the financial benefits may not outweigh the potential risks. Such individuals may fear that paternity or child support actions have the potential to renew violence by alerting the abuser to their location, precipitating physical contact with the abuser in the courthouse, or stimulating desires for custody or parenting time that could lead to regular, dangerous contact. Aggressive child support enforcement also may pose a risk of violent retaliation by the abuser. Nonetheless, because financial independence is so important to establishing a violence-free household, it is not surprising to find research confirming that most victims of domestic violence want child support if they can obtain it safely.* Moreover, enforcement of abusers' support obligations makes sense from a policy perspective because it sends them a message that abusive tactics will not be effective to free them from their financial responsibilities.

The rest of this chapter contains information about state and federal laws that address the foregoing concerns of abused individuals in proceedings to establish and enforce support. The chapter also provides suggestions for case management practices that promote safety.

> **Note:** A general discussion of court procedures for establishing and enforcing spousal and child support orders is beyond the scope of this Resource Book. For a brief discussion of criminal sanctions for desertion and non-support, see Section 8.7(E).

5.2 The Effect of Abusive Conduct on Property Division, Spousal Support, and Child Support

Although a trial court may not consider the element of fault in its decision to enter a divorce judgment,* the Michigan Supreme Court has held that the parties' conduct is still a factor in adjudicating property questions in divorce cases. In *Sparks v Sparks*, 440 Mich 141, 157–158 (1992), the Court examined the 1971 "no-fault" amendments to the divorce act and concluded that the Legislature's failure to amend the property section to remove the concept of fault "evidenced an intent to retain the traditional factors when fashioning a property settlement." The Court then listed these factors — including fault — and instructed the state's trial courts to consider them in dividing marital property, without assigning disproportionate weight to any one factor.

*See MCL 552.6(3); MSA 25.86(3) on the grounds for entering a divorce judgment.

This section explores how the Michigan appellate courts have applied the principles in *Sparks* to questions of property division and spousal support in divorce cases. It also addresses the murkier question of the role of a party's conduct in decisions regarding child support.

A. The Parties' Conduct as a Factor in Property Division

Marital misconduct is one of several factors to consider in reaching an equitable division of marital assets upon divorce. In *Sparks v Sparks, supra*, 440 Mich at 157, 159–160, the Michigan Supreme Court reviewed a trial court's property distribution made solely on the basis of one party's extramarital sexual relationship. The Supreme Court found that the trial court had erroneously assigned disproportionate weight to this party's conduct, and remanded the case for additional findings of fact. The Supreme Court then instructed Michigan trial courts to consider the following factors whenever they are relevant to the circumstances of a particular case:

- Duration of the marriage.
- Contributions of the parties to the marital estate.
- Age of the parties.
- Health of the parties.
- Life status of the parties.
- Necessities and circumstances of the parties.
- Earning abilities of the parties.
- Past relations and conduct of the parties.
- General principles of equity.
- Any additional factors relevant to a particular case, such as the interruption of a party's career or education.

In weighing the foregoing factors, a trial court must make specific findings regarding any that are relevant to the case. A court must not assign disproportionate weight to any one factor. 440 Mich at 158. The Supreme Court expressed the following guidelines:

> "It is not desirable, or feasible, for us to establish a rigid framework for applying the relevant factors. The trial court is given broad discretion in fashioning its rulings and there can be no strict mathematical formulations....But...while the division need not be equal, it must be equitable....Just as the final division may not be equal, the factors to be considered will not always be equal. Indeed, there will be many cases where some, or even most, of the factors will be irrelevant. But where any of the factors delineated... are relevant to the value of the property or to the needs of the parties, the trial court shall make specific findings of fact regarding those factors." 440 Mich at 158–159.

In weighing a party's conduct, the trial court's purpose is to reach an equitable division of the marital property, not to punish the party found at fault for the breakdown of the marriage. In *McDougal v McDougal*, 451 Mich 80 (1996), the circuit court found the husband in an eight-year marriage at fault for the parties' divorce, based on acts that included an assault on the wife. On this basis, it awarded the wife a large proportion of the marital property. The Supreme Court acknowledged that the wife was entitled to a substantial award, but found the circuit court's disproportionate award to her inequitable. It remanded the case, instructing the circuit court to consider other factors such as the duration of the marriage, both parties' significant contributions to the marital estate, the 22-year difference in the parties' ages, the husband's terminal illness, the wife's employment, and the husband's retirement. The Supreme Court stated: "[F]ault is an element in the search for an equitable division — it is not a punitive basis for an inequitable division. We cannot agree that the element of fault in this case supports the extreme financial penalties imposed by the circuit court." 451 Mich at 90. See also *Sands v Sands*, 442 Mich 30, 36–37 (1993), in which the Supreme Court overruled a Court of Appeals decision that would have created an automatic rule of forfeiture for cases involving concealment of assets, stating "a judge's role is to achieve equity, not to 'punish' one of the parties."

Spooner v Spooner, 175 Mich App 169 (1989), illustrates how fault should be weighed in reaching a fair and equitable property settlement between the parties to a divorce. The parties to this case were divorced after the husband assaulted his wife. In granting the divorce, the trial court found that the husband was at fault for the breakdown of the marriage on the basis of the assault and other acts. The court also found that: the marriage was of short (two years) duration; the husband brought far greater assets into the marriage than the wife; and, each party had the ability to earn a living. Based on these findings, the court awarded each party the assets brought into the marriage. Additionally, based on the husband's fault, the court awarded the wife

$35,000 from his stock account. The Court of Appeals upheld the trial court's property settlement. With respect to the $35,000 distribution to the wife, the panel stated: "The award was based on [the husband's] fault in causing the divorce and because a legitimate inference could be made based on [the wife's] use of her money for household expenses which freed...[the husband] to use his own funds to strengthen those accounts." 175 Mich App at 173.

In *Welling v Welling*, 233 Mich App 708 (1999), the Court of Appeals reviewed the trial court's determination of fault in a case where a party's misconduct resulted from his use of alcohol. The party asserted that the trial court erred in considering his alcoholism when determining marital fault. The Court of Appeals disagreed, finding that the trial court correctly considered the party's *behavior* while drinking, not his status as an alcoholic. This behavior included passing out on a daily basis and verbal abuse. 233 Mich App at 710–711. The Court of Appeals further found "inapposite" the party's contention that his conduct while intoxicated was not intentional or wrongful:

> "In determining 'fault' as one of the factors to be considered when fashioning property settlements, courts are to examine 'the conduct of the parties during the marriage.' [*Sparks v Sparks, supra*, 440 Mich at 157.] The question here is whether one of the parties to the marriage is more at fault, in the sense that one of the parties' conduct presented more of a reason for the breakdown of the marital relationship than did the conduct of the other. Clearly, defendant's conduct in this case...did present a greater reason for the breakdown of the relationship. This is the obvious conclusion even if we assume that the defendant's behavior was not 'intentional' or 'wrongful.' The effect of the conduct on plaintiff and the marital relationship was highly detrimental, regardless of the reasons behind it." 233 Mich App at 711–712.

In determining who is at fault for purposes of making a property division, the focus must be on the conduct of the parties leading to the separation. *Zecchin v Zecchin*, 149 Mich App 723, 728 (1986) (husband's voluntary departure from the family home at the wife's request did not justify the trial court in ascribing fault for the breakup to the wife where facts showed that marital breakdown had occurred prior to this incident).

B. The Parties' Conduct as a Factor in Awarding Spousal Support

The trial court has discretion to order spousal support to be paid "as the court considers just and reasonable, after considering the ability of either party to pay and the character and situation of the parties, and all the other circumstances of the case." MCL 552.23(1); MSA 25.103(1). The main objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either one. *Magee v Magee*, 218 Mich App

158, 162 (1996), citing *Hanaway v Hanaway*, 208 Mich App 278, 295 (1995) and *Ianitelli v Ianitelli*, 199 Mich App 641, 642–643 (1993).

In exercising discretion to award spousal support, the court must consider a number of different factors, including a party's fault in causing the divorce. *Thames v Thames*, 191 Mich App 299, 308 (1991). In addition to fault, other factors to consider are:

- The past relations and conduct of the parties.
- The length of the marriage.
- The abilities of the parties to work.
- The source and amount of property awarded to the parties.
- The parties' ages.
- The abilities of the parties to pay spousal support.
- The present situation of the parties.
- The needs of the parties.
- The parties' health.
- The prior standard of living of the parties and whether either is responsible for the support of others.
- Contributions of the parties to the joint estate.
- General principles of equity.

*See *Sparks v Sparks*, 440 Mich 141 (1992), discussed above.

Although the Michigan Supreme Court has not expressed itself on this issue, the Court of Appeals has weighed the foregoing factors using the same principles that apply in cases involving divisions of marital property.* In *Cloyd v Cloyd*, 165 Mich App 755 (1988), the trial court awarded the plaintiff wife custody of the parties' three children under age 18, with defendant to pay child support on a sliding scale, as well as medical expenses and insurance for the children. The court also awarded the wife the marital home, and $300 towards her attorney fees. The court did not, however, award spousal support to either party. In reaching its decision, the trial court found the husband more at fault than the wife for the breakdown of the parties' 19-year marriage, based in part on testimony regarding incidents of physical violence prior to the parties' separation. The trial court also found that the wife had limited prospects for future employment because she lacked education beyond high school, had not been working in the years just prior to the divorce, and suffered from a disability. On appeal, the Court of Appeals reviewed all of the trial court's findings, and held that the failure to award spousal support to the wife was erroneous. The panel found that "virtually every factor weighs in plaintiff's favor." With respect to the husband's abusive behavior, the panel noted that "the past conduct of the parties factor weighs in plaintiff's favor in

light of the testimony regarding defendant's violent behavior." 165 Mich App at 761.

For a Supreme Court case in which abusive conduct was a factor in the court's award of spousal support, see *Johnson v Johnson*, 346 Mich 418, 429–430 (1956) ("The plaintiff...was forced into court by the defendant's cruelty, and under such circumstances...plaintiff should not lose her marital right to support to which she would have been entitled had the marriage continued and which she was compelled to forego because of the defendant's conduct").

C. The Parties' Conduct as a Factor in Awarding Child Support

The trial court must consider the child's needs and actual resources of each parent in determining the amount of child support. See MCL 552.519(3)(a)(vi); MSA 25.176(19)(3)(a)(vi), *Thames v Thames*, 191 Mich App 299, 306 (1991). Various statutes require trial courts to order support in an amount determined by application of the Child Support Formula developed by the state Friend of the Court Bureau under MCL 552.519(3); MSA 25.176(19)(3). Orders deviating from the formula may be entered only if the court determines that application of the formula would be unjust or inappropriate. See, e.g., MCL 552.15(2)–(3); MSA 25.95(2)–(3) (order after filing complaint for divorce), MCL 552.16(2)–(3); MSA 25.96(2)–(3) (order after entry of divorce judgment), MCL 552.17(2)–(3); MSA 25.97(2)–(3) (modification of divorce judgment), MCL 722.27(2)–(3); MSA 25.312(7)(2)–(3) (order issued in child custody dispute).

The Child Support Formula does not address domestic violence as a factor in determining the amount of support. Likewise, no Michigan statute or appellate case has connected domestic violence with a child's need for support as of the publication date of this Resource Book. It is conceivable, however, that domestic violence could result in particular needs justifying an order for child support that deviates from the child support formula. For example, a child may need additional support to pay for medical or mental health care costs resulting from a party's violent conduct. In such cases, the child's increased needs may render application of the support formula unjust or inappropriate.

In *Burba v Burba (After Remand)*, 461 Mich 637, 643–645 (2000), the Michigan Supreme Court held that a court may deviate from the Child Support Formula if it determines from the facts of the case that its application would be unjust or inappropriate, and sets forth in writing or on the record: 1) the amount of support determined by application of the Formula; 2) how the support order deviates from the Formula; 3) the value of property or other support awarded in lieu of the payment of child support, if applicable; and, 4) the reasons why application of the Formula would be unjust or inappropriate. The Supreme Court further held that if the Friend of the Court determines that the facts of the case render application of the Child Support Formula unjust or inappropriate, the Friend of the Court must prepare a written report including:

- The amount of support, based on actual income earned by the parties, determined by application of the Child Support Formula and all factual assumptions upon which that support amount is based.
- An alternative support recommendation and all factual assumptions upon which the alternative support recommendation is based.
- How the alternative support recommendation deviates from the Child Support Formula.
- The reasons for the alternative support recommendation.
- All evidence known to the Friend of the Court that the individual is or is not able to earn the income imputed to him or her.

461 Mich at 650, citing MCL 552.517(3); MSA 25.176(17)(3).

Finally, the Court in *Burba* held that as a matter of law, income disparity between the parties is *not* an appropriate reason for deviating from the Formula, because income disparity is already factored into it. 461 Mich at 649.

5.3 Promoting Safe Enforcement of Support Obligations

Under MCR 3.208(B), the Friend of the Court is responsible for initiating proceedings to enforce an order or judgment for support. This section explores four things a court can do to promote safety in support proceedings where domestic violence is a factor: gather information, provide information, safeguard confidential information, and minimize contact between the parties. A general discussion of court procedures for enforcing spousal and child support orders is beyond the scope of this Resource Book; however, a brief discussion of criminal sanctions for desertion and non-support appears at Section 8.7(E).

A. Gathering Information

Information-gathering is key to promoting safety in the establishment and enforcement of support obligations. To respond adequately to domestic violence in support proceedings, court personnel need to know about the following:

- The nature and dynamics of domestic violence generally. A basic understanding of domestic violence enables court employees to identify it as a factor and appropriately take it into account in the cases before them. Chapter 1 contains more information about the nature and dynamics of domestic violence.
- Whether domestic violence is a factor in a particular case. The more information a court has about the presence of domestic violence in a

case, the better equipped it will be to tailor its safety precautions, recommendations, orders, and enforcement measures to the needs of parties. To gather the appropriate information, employees must learn techniques to safely screen for domestic violence at all stages of a case. A discussion of case screening appears in Chapter 2.

B. Providing Information

Information is critical to abused individuals. It empowers them to escape abuse, and is critical to their safety planning. Abused individuals need information about the following:

- The workings of all agencies within the support system, including those outside the court system. Accurate information about the support system is critical if individuals are to gain access to it. Knowledge about the system is particularly important in cases involving domestic violence, where an abuser may deliberately provide false information as a means of maintaining control in the relationship. Information about the system might be offered at each point where assistance is requested.

- How government support agencies will use information about domestic violence. The rules protecting confidential information (*and* the limits of these protections) should be clearly explained so that abused individuals can account for them when planning for safety.

- Each action taken in a case. If an individual knows that a court or other agency is about to take action to enforce a support obligation, the individual can take adequate safety precautions.

- Community referral resources. Because court personnel do not have the training to address all the needs of an abused individual, they need to make appropriate referrals to other community resources that can offer other types of assistance. Information about referral resources appears in Chapter 3.

C. Safeguarding Confidentiality

Because domestic violence victims sometimes go into hiding to escape their abusers, it is critical to their safety that addresses and other identifying information remain confidential. It may be necessary to remove such information from court papers that the abuser may see. Other strategies for safeguarding confidentiality are:

- Provide for privacy in interview areas so that the parties feel safe about sharing information.

- Do not bring up domestic violence issues with the alleged perpetrator present.

- Take care about discussing domestic violence issues when children, friends, or other family are present, as the abused party may not believe they are aware of the domestic violence and/or may not want them to have specific information about it.

*See Section 3.5 on cross-cultural communication.

- Do not allow a friend or family member to act as an interpreter for a person who does not speak English. The abused individual may not discuss domestic violence when these persons are present for fear that they may disclose the conversation to the abuser or for fear that the information presented may endanger the interpreter. In some cases, the interpreter might not want the violence to be disclosed, and may not accurately convey the abused individual's statements to the interviewer.*

For more discussion of the rules regarding confidential information, see Sections 2.13 and 5.4.

D. Minimizing Contact Between the Parties

Opportunities for violence arise when abusers and their victims come into contact during court proceedings. To minimize contact between the parties, courts can adopt the following strategies:

*See Menard & Turetsky, *Child Support Enforcement & Domestic Violence*, 50 Juvenile & Family Court J 27, 33 (Spring, 1999).

- Do not require the abused individual to come to court for proceedings unless it is absolutely necessary.*

- If both parties must come to the courthouse, provide separate waiting areas for them. Never leave the parties alone together in a waiting area.

- Meet with the parties separately to prevent coercion or intimidation of the abused individual.

- If both parties must come to the courthouse, stagger arrival and departure times. Safety concerns may require keeping the abusive party in the courthouse longer after the court proceeding has ended, so that the abused individual may leave without being followed.

*See Sections 1.6 and 4.6 on the use of parenting time as a control tactic.

- Refrain from linking parenting time to support payments. In cases involving domestic violence, abusers frequently use contacts for parenting time as opportunities to harass, threaten, or assault a former partner.* Under these circumstances, a linkage between parenting time and support payments encourages the abuser's efforts to control the other parent, and in some cases, may endanger the other parent.

Because domestic violence typically involves psychological abuse as well as physical assault, opportunities for abuse arise any time the parties interact, even if the interaction does not involve physical contact. To prevent abusers from using the mail or other forms of communication to threaten or otherwise harass their victims, courts might consider the following strategies:

- If an abusive payor has income that can be withheld for support, order income withholding. Income withholding is required by federal law (see 42 USC 666(a)(1), (b)) and is the most reliable way to ensure that an abused payee receives support without being harassed or threatened by communications sent in the mail with support checks.*

*Sager, *Managing Your Divorce: A Guide for Battered Women*, p 50 (Nat'l Council of Juvenile & Family Court Judges, 1998).

- In some cases involving domestic violence, the payee may not take the initiative to enforce the support obligation of an abusive former partner. The payee in these cases may be concerned about revealing his or her whereabouts, or may fear reprisal from the abusive party. It is thus important to remember that the responsibility for initiating enforcement proceedings is with the office of the Friend of the Court, not with the abused party; the payee's participation is not needed to enforce the court's order for support. See, e.g., MCR 3.208(B), MCL 552.511(1); MSA 25.176(11)(1). Communicating this fact to the abusive party may promote safety; some abusers may not engage in coercive behavior if they realize that the payee is not in a position to control efforts to enforce support obligations.

In interstate cases, the Uniform Interstate Family Support Act ("UIFSA") provides that a petitioner's presence in Michigan is not required for the establishment, enforcement, or modification of a support order or for the rendering of a judgment determining parentage. MCL 552.1328(1); MSA 25.223(328)(1). This statute also contains a number of evidence-gathering provisions that permit fact-finding without requiring the presence of witnesses in a Michigan court, as follows:

> "(2) A verified petition, affidavit, document substantially complying with federally mandated forms, or document incorporated by reference in any of them that would not be excluded as hearsay if given in person is admissible in evidence if given under oath by a party or witness residing in another state.
>
> "(3) A copy of a record of child support payments certified as a true copy of the original by the record's custodian may be forwarded to a responding tribunal. The copy is evidence of the facts asserted in it and is admissible to show whether payments were made.
>
> "(4) If furnished to the adverse party at least 10 days before trial, a copy of a bill for testing for parentage, or for the mother's or child's prenatal or postnatal health care, is admissible in evidence to prove the amount billed and that the amount is reasonable, necessary, and customary.
>
> "(5) Documentary evidence transmitted from another state to this state's tribunal by telephone, telecopier, or other means that does not provide an original writing shall not be

> excluded from evidence on an objection based on the means of transmission.
>
> "(6) In a proceeding under this act, this state's tribunal may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. This state's tribunal shall cooperate with other states' tribunals in designating an appropriate location for the deposition or testimony."

MCL 552.1332; MSA 25.223(332) further provides that a Michigan tribunal may request a tribunal in another state to assist in obtaining discovery. Moreover, a Michigan tribunal may, upon request, compel a person under its jurisdiction to respond to a discovery order issued in another state.

5.4 Federal Information-Sharing Requirements

*42 USC 653(h)–(i).

The Federal Parent Locator Service ("FPLS") is key to efforts to improve child support enforcement under the federal Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"). The FPLS is operated by the federal Office of Child Support Enforcement ("OCSE") in the U.S. Department of Health and Human Services. It includes a Federal Case Registry of Child Support Orders and a National Directory of New Hires.* 42 USC 653(a)(2)–(3) authorizes the following uses for information in the FPLS:

- Establishing parentage.
- Establishing, setting the amount of, modifying, or enforcing child support obligations.
- Enforcing any federal or state law regarding the unlawful taking or restraint of a child.
- Making or enforcing a child custody or visitation determination.

In child support cases, the FPLS can be used to obtain and transmit information about the location, income, and assets or debts of persons who owe child support, are owed child support, or who have or may have parental rights regarding a child.

The National Directory of New Hires and the Federal Case Registry of Child Support Orders are linked to each other and to corresponding state databases that states must create and maintain. 42 USC 653a (State Directory of New Hires), 654a(e) (State Case Registry). See also MCL 400.233(h); MSA 25.307(3)(h) (the Office of Child Support shall develop a statewide information system to facilitate establishment and enforcement of child support obligations). State case registries must include a centralized case registry of all IV-D cases and all child support orders (whether IV-D or not)

established or modified in the state after October 1, 1998. 42 USC 654a(e). As of the publication date of this Resource Book, Michigan was in the process of developing the state databases required under the federal statutes.

42 USC 654a(e)(1)–(4) provides that the State Case Registry must include the following information:

- Identifying information for both parents, including names, social security numbers, other identification numbers, dates of birth, case identification numbers, and any other information the Secretary of the U.S. Department of Health and Human Services may require.
- The birth date and social security number of any child for whom there is a support order or provision.
- Payment records, including the amount of monthly support owed, other amounts, and fees due or overdue.

States must periodically forward the foregoing data to the Federal Case Registry within the Federal Parent Locator Service. 42 USC 654a(f)(1). As of the publication date of this Resource Book, Michigan was in the process of implementing this federal requirement. Information in the FPLS is accessible to "authorized individuals." For child support purposes, "authorized individuals" are listed in 42 USC 653(c) as follows:*

> "(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amount owed as child and spousal support (including, when authorized under the State plan, any official of a political subdivision);
>
> "(2) the court which has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;
>
> "(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving [public assistance]) without regard to the existence of a court order against a noncustodial parent who has a duty to support and maintain any such child; and
>
> "(4) a State agency that is administering a program operated under a State plan...."

*Note that "authorized persons" are defined differently for purposes of cases involving parental kidnapping or access to children. See 42 USC 663(d)(2) and Section 4.12.

Although the data-collection and information-sharing requirements under PRWORA facilitate enforcement of child support and custody orders, they pose a potential danger to abused individuals who are in hiding from a domestic violence perpetrator. To address this concern, the Act contains a number of provisions that prevent domestic violence perpetrators from using the state and federal databases to locate victims in hiding. (These security

provisions also apply when information is sought in parental kidnapping or custody enforcement cases. 42 USC 663(c).)

42 USC 654(26) prohibits the state from disclosing information to potentially dangerous individuals as follows:

> "A state plan for child and spousal support must --
>
> * * *
>
> "(26) have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including --
>
> * * *
>
> (B) prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;
>
> (C) prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child...."

Additionally, 42 USC 653(b)(2) prohibits the OCSE from disclosing FPLS information shall be disclosed to any person "if the State has notified the Secretary [of Health and Human Services] that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent." Under 42 USC 654(26)(D), the state child support agency is required to send such a notice to the Secretary if:

- A protective order with respect to the parent or child has been entered; *and*,
- The state has reason to believe that the release of the information may result in physical or emotional harm to the party or the child.

  Note: The Office of Child Support in the Family Independence Agency has issued *Policy Bulletin No 99–04* regarding implementation of this requirement in Michigan. This Bulletin is reproduced in Appendix D.

After receiving this notice (also referred to as a "Family Violence Indicator") from the state child support agency, the OCSE will not disclose FPLS data

when requested by an "authorized person." Instead, the FPLS will notify the "authorized person" that: 1) the state has given notice of reasonable evidence of domestic violence or child abuse; and, 2) information can only be disclosed to a court or an agent of a court with authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for child support. 42 USC 653(b)(2), (c). The "authorized person" can then petition a court with proper jurisdiction to order a one-time override of the family violence indicator.

As of the publication date of this Resource Book, Michigan had not yet developed procedures for implementing the one-time override provision. If a case is "flagged" with a Family Violence Indicator, however, 42 USC 653(b)(2)(A)–(B) requires judicial review of requests for disclosure. If the court determines that disclosure could be harmful, it may not disclose the information to anyone. If the court decides that the FPLS information would not cause the parent or child harm, the information may be released. See also 42 USC 654(26)(E), which provides:

> "A State plan for child and spousal support must --
>
> * * *
>
> "(26) have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including --
>
> * * *
>
> (E) procedures providing that when the Secretary [of Health and Human Services] discloses information about a parent or child to a State court or an agent of a State court...and advises that court or agent that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 653(b)(2) of this title, the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure..."

Additional information about the circumstances of a case in which a Family Violence Indicator is present may be available, but only through the state IV-D agency or the court that imposed the Indicator, or through the individuals involved.

To a great extent, implementation of the foregoing provisions of federal law is left to the states. Issues that states must address include:

- Procedures and standards for determining when a particular case should be "flagged" with a Family Violence Indicator. Each state must define the terms "domestic violence" and "child abuse" as well as the evidence required to establish such a finding. For Michigan procedures and standards, see Office of Child Support, *Policy Bulletin No 99–04*, which is reproduced in Appendix D.

- The agency responsible for applying a Family Violence Indicator to a particular case. Although the state IV-D office must maintain the State Case Registry and forward data (including Family Violence Indicators) to the Federal Case Registry, the IV-D agency is not required by federal law to determine whether a Family Violence Indicator should be applied in a particular case. States can choose to place this responsibility on the court system, administrative hearing officers, and/or TANF workers.* In Michigan, application of the Family Violence Indicator is a function of the state's IV-D agency.

* "TANF" refers to the Temporary Assistance to Needy Families program.

- Procedures for acquiring information about family violence, including who should make the determination that a Family Violence Indicator is appropriate.

- The duration of the finding that the Family Violence Indicator is appropriate, and the criteria and time line for updating or removing the Family Violence Indicator. As of the publication date of this Resource Book, no process for system review of cases with a Family Violence Indicator had been developed in Michigan; the Indicator remains with the case until a caseworker removes it.

- The intrastate management of information deemed confidential in the State Case Registry.

- The mechanism for petitioning the court to release information after a Family Violence Indicator has been placed on a case. This mechanism had not been developed in Michigan as of the publication date of this Resource Book.

The Office of Child Support Enforcement has compiled a survey of state implementation practices entitled *The Family Violence Indicator: A Guide to State Practices.* A copy of this Guide can be obtained by visiting the OSCE Home Page on the Internet at: http://www.acf.dhhs.gov. Updated information about Michigan implementation of PRWORA's information-sharing requirements can be found at the Family Independence Agency website: www.mfia.state.mi.us.

5.5 Public Assistance and Domestic Violence

Studies show that a significant percentage of welfare recipients are victims of domestic violence. See Raphael and Haennicke, *Keeping Battered Women Safe Through the Welfare-to-Work Journey: How Are We Doing?* p 4 (Taylor Institute, 1999) (estimating 20%–30%) and Pearson, et al, *Child Support and*

Domestic Violence: The Victims Speak Out, p 443, in Violence Against Women (Sage Periodicals Press, April, 1999) (disclosure of current or past abuse by public assistance applicants ranged from 28% to 49% at four office sites surveyed). These results are not surprising in light of the fact that domestic violence perpetrators often use economic means to exercise control — they often limit their partners' access to money or prevent their partners from working or developing job skills. An individual so deprived of economic independence may find it extremely difficult to return to the work force after leaving an abuser, either because of the inability to develop a work history or skills during the relationship, or because the abuser has thwarted efforts to get or keep a job the relationship has ended.

The 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") replaced the Aid to Families with Dependent Children ("AFDC") program with a Temporary Assistance to Needy Families ("TANF") program. This section explores two features of the TANF program that are of particular concern to individuals who have been subjected to domestic violence.*

*For further guidance on public assistance in Michigan, see *FIA Publication 859* (Family Independence Agency, Aug, 2000).

A. Eligibility Limits

The 1996 federal legislation imposed a lifetime eligibility limit of 60 months on families receiving TANF assistance. 42 USC 608(a)(7). Michigan does not have a time limit on its Family Independence Program, but does not seek federal financial participation if the family includes an adult who has received assistance payments for more than 60 months. Families in need of assistance beyond the 60-month limit are state-funded as long as they continue to meet program requirements.*

*TANF State Plan, p 2 (Family Independence Agency, Feb, 2000).

Many commentators have expressed concerns that the federal 60-month limitation is not reasonable for abused individuals, who may take longer to develop full economic independence due to interference from their abusers. For example, in one study of public assistance applicants at four sites, 44% of applicants disclosing domestic violence reported that their abusive former partners had prevented them from working. Fifty-eight percent reported that they or their children were isolated.* To address these concerns, the federal legislation provides a "Family Violence Option," which exempts TANF recipients from the 60-month limitation. At its discretion, a state may elect to adopt the Family Violence Option, which applies "by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty." 42 USC 608(a)(7)(C)(i).

*Pearson, et al, *supra*, p 439.

"Battered or subject to extreme cruelty" is defined in 42 USC 608(a)(7)(C)(iii) as follows:

> "[A]n individual has been battered or subjected to extreme cruelty if the individual has been subjected to --

(I) physical acts that resulted in, or threatened to result in, physical injury to the individual;

(II) sexual abuse;

(III) sexual activity involving a dependent child;

(IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(V) threats of, or attempts at, physical or sexual abuse;

(VI) mental abuse; or

(VII) neglect or deprivation or medical care."

Regulations promulgated by the Office of Family Assistance further provide that exemptions under the Family Violence Option are granted in cases "where compliance would make it more difficult for...individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence." 45 CFR 260.52.

The average number of families who are granted this exemption in a state during a fiscal year may not exceed 20% of the total average number of families to which assistance has been provided in the current or immediately preceding fiscal year. 42 USC 608(a)(7)(C)(ii). Exemptions must be granted based on need, as determined by an individualized assessment by a person trained in domestic violence; cases in which exemptions are granted must be reviewed no less often than every six months. Exemptions must also be accompanied by a services plan. 45 CFR 260.55.

Michigan has not adopted the federal Family Violence Option. Instead, domestic violence victims may obtain a 90-day exemption from work activities renewable indefinitely with the approval of the Family Independence Manager.* This waiver stops the federal 60-month clock. FIA workers must take their clients' word that domestic violence is a factor unless they can document the reason why they believe that verification is necessary. Once deferred, the case worker works with the victim to determine a service plan that is reasonable and safe for the victim, using the victim's own expertise about what is safe.

*Family Independence Agency, *Program Eligibility Manual 230*, p 15–16 (Oct 1, 2000).

Courts can be helpful to individuals who seek a waiver from the TANF time limitations by documenting domestic violence in court orders and other written court papers.

B. Cooperation with State Child Support Agency in Locating Non-Custodial Parents

Under the TANF program, states use child support payments collected on behalf of those receiving assistance to reimburse the state for the assistance payments. Thus, TANF recipients must assign their support rights to the state as a condition of assistance, and must cooperate with the state child support agency in locating non-custodial parents who owe support. 42 USC 608(a)(2)–(3) allows reduction or elimination of public assistance for noncooperation in establishing paternity or obtaining child support. However, states may adopt a "good cause" exception to the federal cooperation requirement. 42 USC 654(29).

In Michigan, failure to cooperate results in disqualification from the program for a minimum of one month; if an individual remains disqualified for four consecutive months for failure to cooperate in obtaining support, the entire case is closed. It must remain closed for a minimum of one month and cannot be reopened until the noncooperative person cooperates with the action to establish paternity or obtain support. 1997 MR 8, R 400.3125.

In situations involving domestic violence, a TANF recipient may be placed in danger by divulging the required information. Thus, a "good cause" exception exists in Michigan for appropriate cases. 1997 MR 8, R 400.3124 provides:

> "(1) A client shall take all action required by [MCL 400.1 et seq; MSA 16.401 et seq] to establish paternity and obtain support.
>
> "(2) A client may claim good cause for not taking the action specified in subrule (1) of this rule. Good cause includes any of the following reasons:
>
> (a) The child entitled to support was conceived due to incest or forcible rape.
>
> (b) Legal proceedings for the adoption of the child entitled to support are pending before a court.
>
> (c) A client is currently receiving counseling from a public or licensed private social agency to decide if the child should be released for adoption and the counseling has not continued for more than 3 months.
>
> (d) Serious physical harm to the child entitled to support.
>
> (e) Serious physical harm to the client.

(f) Serious emotional harm to the child entitled to support that actually harms the child's ability to function in everyday life.

(g) Serious emotional harm to the client that actually harms the client's capacity to adequately care for the child entitled to support.

"(2) [sic] A client's cooperation in establishing paternity and obtaining support is not required if good cause exists, but a support action may proceed if the FIA determines that the action would not endanger the child or client.

"(3) [sic] Once a client is informed of the right to claim good cause and decides to make the claim, the client shall do all of the following:

(a) Specify the type of good cause.

(b) Specify the persons covered by the claim of good cause.

(c) Provide written evidence to support the claim within 20 calendar days of filing the claim.

"(4) [sic] A good cause determination shall be made within 45 calendar days of the client's written claim, unless the client was granted an additional 25-calendar-day extension to the original 20-calendar-day limit and more information is needed that cannot be obtained within the 45-calendar-day limit.

"(5) [sic] A good cause determination shall make 1 of the following findings:

(a) Good cause does not exist and the client must cooperate.

(b) Good cause does exist and the client's cooperation in obtaining support is not required.

(c) Good cause does exist, but a support action can proceed without the client and without endangering the client or child."

See also 1997 MR 8, R 400.3126–400.3128, which contain a similar cooperation requirement and good cause exception regarding identification of third-party resources (defined in 1997 MR 8, R 400.3101(1)(ii) as persons, entities, or programs that are, or might be, liable to pay all or part of a recipient's medical expenses).

Lack of proper documentation is a key obstacle to individuals seeking to establish a "good cause" exception to the TANF cooperation requirements.

One study of four social service sites in Colorado found that 59% of the "good cause" applications denied either lacked documentary evidence or lacked sufficient evidence. Successful applicants provided an average of two types of documents. A significant percentage (32%) of persons polled in this study stated that they were not interested in applying for a "good cause" exception because they lacked documents to prove harm. Pearson, et al, *supra*, p 441–443. In Michigan, 1997 MR 8, R 400.3124(3)(c) requires "written evidence" supporting a "good cause" claim to be submitted within 20 calendar days of filing the claim. Courts can be helpful to individuals who seek a "good cause" exception by documenting domestic violence in court orders and other written court papers.